Supreme Court, U.S.
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No. 96-340

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

MATTIE L. VAUGHN, M.D.,

Petitioner,

v.

THE STATE MEDICAL BOARD OF OHIO,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Ohio

PETITIONER'S REPLY BRIEF

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26 pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.	iii
STATEMENT OF THE CASE.	1
REASONS FOR GRANTING THE PETITION.	1
I. This Case, Which Squarely Presents The Issue Of Whether The Protection Of The Eighth Amendment Applies To State Disciplinary Proceedings, Is Not Just "About Dr. Vaughn Individually"	2
II. The Board's Contention That The Revocation Of A Medical License Is Not "Punishment" For The Purposes Of The Cruel And Unusual Clause Of The Eighth Amendment Is Erroneous.	3
III. Contrary To The Medical Board's Allegations, The Punishment Imposed Upon Dr. Vaughn Was Inappropriate And Disproportionate To Her Conduct, Particularly In View Of The Disparate Punishment She Received From The Board As Compared With Other Doctors Disciplined By The Board.	5
IV. The Right Of Allocution, Guaranteed By The Due Process Clause Of The Fourteenth Amendment, Is Applicable To State Licensing Disciplinary Proceedings.	7

Page

V. Valid Constitutional Issues Are Presented Under The Facts Of This Case. 10

CONCLUSION 10

APPENDIX A Summary of Less Severe Punishments Imposed By The State Medical Board Of Ohio On Other Physicians Who Engaged In More Egregious Misconduct That Petitioner Mattie L. Vaughn, M.D. 11

APPENDIX B Affidavit of Bernard F. Master, D.O. 18

TABLE OF AUTHORITIES

Cases:	Page
Amon v. United States, 509 U.S. 602 (1993)	4
Austin v. United States, 509 U.S. 602 (1993)	4
Brost v. Ohio State Medical Board, 62 Ohio St. 3d 218, 221 (1991)	6
Chessman v. Teets, 354 U.S. 156, 165 (1957)	2
Columbus Bar Association v. Wolfe, 70 Ohio St. 2d 55 (1982)	5
Ex Parte Milligan, 71 U.S. (4 Wall) 2., 120-21 (1866)	2
Hale v. Ohio State Veterinary Board, 47 Ohio App. 3d 167, 548 N.E. 2d 247 (1988)	4
In Re Ruffalo, 390 U.S. 544, 551 (1968)	9
In the Matter of: David R. Williams, M.D. v. State Medical Board of Ohio, 1990 Ohio App. LEXIS 2088, aff'd 60 Ohio St. 3d 85 (1991)	4
Levine v. United States, 362 U.S. 610, 616 (1960)	8
Ohio State Bar Ass'n v. Loha, 4 Ohio St. 3d 190 (1953)	5,8

Page

Robinson v. California,
370 U.S. 660, 667 (1962) 6

Solem v. Helm,
463 U.S. 277, 303 (1983) 6

Toledo Bar Ass'n v. DeMars,
56 Ohio St. 3d 90 (1990) 4

Toledo Bar Ass'n v. Lichota,
15 Ohio St. 217 2d (1968) 5

United States v. Barnes,
948 F.2d 325, 328 (7th Cir. 1991) 8

United States v. Harper,
490 U.S. 435 (1989) 3

Vann v. Scott,
267 F.2d 1235, 1240 (7th Cir. 1972) 4

Constitutional Provisions:

United States Constitution

Eighth Amendment 1-3,5

Fourteenth Amendment 7

Other Authorities:

State Medical Board of Ohio,
FORMAL ACTION MAILING LIST 11-17

STATEMENT OF THE CASE

The characterization of Dr. Vaughn's medical practice as "little more than a diet pill mill" by The State Medical Board of Ohio (the "Board") is not a fair characterization of her practice, even before the disciplinary proceeding of 1986 was initiated. It does not accurately describe her practice after changes were made and the practice reformed following the initiation of the disciplinary charges in question.

The Board's reference to "non-physician office staff" also fails to note the involvement of a trained nursing staff in Dr. Vaughn's practice.

REASONS FOR GRANTING THE PETITION

In response to the Petitioner's petition, the Board argued that this Court should reject the petition because, according to the Board:

1. This "case is only about Dr. Vaughn individually, and whether the State of Ohio has properly decided that she should no longer be afforded the privilege of practicing medicine." (Board brief, p. 4.)

2. "[T]he revocation of a medical license is not 'punishment' for the purposes of the cruel and unusual punishment clause of the Eighth Amendment." (Board brief, p. 6.)

3. "[E]ven if the cruel and unusual punishment clause were to apply, Dr. Vaughn's violations were so egregious as to justify revocation of her license." (Board brief, p. 7.)

4. "[T]he right of allocation does not apply to state licensure disciplinary proceedings." (*Id.*)

5. No "valid constitutional issue is presented." (Board brief, p. 9.)

The Board's contentions, however, are simply wrong!

I.

This Case, Which Squarely Presents The Issue Of Whether The Protection Of The Eighth Amendment Applies To State Disciplinary Proceedings, Is Not Just "About Dr. Vaughn Individually."

The Board suggested that "there is simply no reason for this Court to hear this case," because, according to the Board, "this case is **only** about Dr. Vaughn **individually**" (Board brief, p. 4) (emphasis added). It failed to recognize that what is at stake is not only the protection of Dr. Vaughn's constitutional rights, but also the Eighth Amendment right of **all Americans**, including thousands of licensed professionals in future state disciplinary proceedings, to be free from the unfettered abuse of a state's "power to punish." The Constitution of the United States "covers with the shield of its protection all classes of men [and women], at all times, and under all circumstances." *Ex Parte Milligan*, 71 U.S. (4 Wall) 2, 120-21 (1866).

As Mr. Justice Harlan noted in *Chessman v. Teets*, 354 U.S. 156, 165 (1957):

> . . . the overriding responsibility of this Court is to the Constitution of the United States . . . **The proponent before the Court is not the petitioner but the Constitution of the United States.**
>
> [Emphasis Added]

Accordingly, there is a compelling reason for this Court to hear this case and resolve the issues of first impression for this Court which are squarely presented.

II.

The Board's Contention That The Revocation Of A Medical License Is Not "Punishment" For The Purposes Of The Cruel And Unusual Clause Of The Eighth Amendment Is Erroneous.

The Board, at pages 5 through 6 of its brief, argued that the state's revocation of a medical license is not "punishment," but merely remedial action to "protect its citizens from unqualified or incompetent practitioners." Significantly, however, it did not (and could not ethically or fairly) argue that the sanction imposed was **"solely"** to serve a remedial purpose. This is fatal to the Board's argument, since this court recognized in *United States v. Harper*, 490 U.S. 435 (1989) that:

> a civil sanction that cannot fairly be said **solely** to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is **punishment**, as we have come to understand the term. *Id.* at 448.
>
> [Emphasis Added]

As noted at page 24 of Dr. Vaughn's Petition:

> From the State Medical Board's perspective, permanent revocation of Dr. Vaughn's medical license serves **both a retributive and deterrent purpose**. The State Medical Board is punishing Dr. Vaughn for her past behavior. By publishing records of its proceedings, in two official publications, *YOUR REPORT FROM THE STATE MEDICAL BOARD OF OHIO* and *FORMAL ACTION MAILING LIST*, the Board also

> apparently hopes to deter other doctors from engaging in prohibited conduct.
>
> [Emphasis Added]

The Board's flawed argument that the sanction imposed upon Dr. Vaughn was merely remedial is very similar to the government's argument in *Austin v. United States*, 509 U.S. 602, 113 S.Ct 2801 (1993), which this Court specifically rejected. *Id.*, at 2801-2811.

In Ohio, disciplinary proceedings and sanctions against licensed professionals historically have been understood to serve not simply a remedial purpose, but also that of **punishment**. See, e.g., *Toledo Bar Association v. DeMars*, 56 Ohio St. 3d 90 (1990) (a disciplinary case in which the Supreme Court of Ohio noted that "alcoholism is a mitigating factor in determining an errant attorney's **punishment**"); *Hale v. Ohio State Veterinary Board*, 47 Ohio App. 3d 167, 548 N.E. 2d 247 (1988) (a disciplinary case involving a veterinarian where the Court noted that the respondent, Dr. Hale, had challenged "the severity of the **punishment** of a six-month license suspension"); *Amon v. State of Ohio, State Medical Board*, 67 Ohio App. 3d 287, 292, 586 N.E.2d 1165 (1990) (a disciplinary case against an Ohio physician convicted of a felony involving conspiracy to distribute cocaine in which the Court remanded the case for a mitigation hearing "which would affect only the **'punishment'** or sanctions to be imposed by the State Medical Board"); *In the Matter of: David R. Williams, M.D. v. State Medical Board of Ohio*, 1990 Ohio App. LEXIS 2088, aff'd 60 Ohio St. 3d 85 (1991) (a disciplinary case involving a physician where the Board suspended a medical license for a three-year probationary period, and the Court concluded that while "deprivation of the right to prescribe all controlled substances . . . may be an appropriate **'punishment'** in certain instances, the facts of this case do not support such a severe sanction . . . ") [Emphasis Added].

Moreover, to use the language of the Seventh Circuit in *Vann v. Scott*, 467 F. 2d 1235, 1240 (7th Cir. 1972), even a "remedial" rehabilitative approach (less drastic than the permanent revocation of a license to practice a profession) can constitute cruel and unusual punishment:

> . . . [N]either the label which a State places on its own conduct, nor even the legitimacy of its motivation, can avoid the applicability of the Federal Constitution. **We have no doubt that well intentioned attempts to rehabilitate . . . could,** in extreme circumstances, **constitute cruel and unusual punishment proscribed by the Eighth Amendment.** [Emphasis Added]

III.

Contrary To The Medical Board's Allegations, The Punishment Imposed Upon Dr. Vaughn Was Inappropriate and Disproportionate To Her Conduct, Particularly In View Of The Disparate Punishment She Received From The Board As Compared.

At page 7 of its brief, the Board argued that "even if the cruel and unusual punishment clause were to apply, Dr. Vaughn's violations were so egregious as to justify revocation of her license." This argument is also without merit. While Dr. Vaughn's conduct was improper and justified an "appropriate and reasonable penalty," the punishment of permanent revocation was, under all circumstances of the case, improper and unconstitutional.

Any disciplinary sanction imposed must be "**an appropriate and reasonable penalty under the circumstances**" of the case. *Ohio State Bar Ass'n v. Loha*, 4 Ohio St. 3d 190 (1953) (emphasis added). A penalty is "inappropriate" if it is "**unduly harsh or unreasonable**." See *Columbus Bar Ass'n v. Wolfe*, 70 Ohio St. 2d 55 (1982); *Toledo Bar Ass'n v. Lichota*, 15 Ohio St.

2d 217 (1968). The Supreme Court of Ohio has also recognized that disciplinary sanctions imposed upon an Ohio doctor must always be "**proportionate**" to the doctor's misconduct. As noted in *Brost v. Ohio State Medical Board*, 62 Ohio St. 3d 218, 221 (1991):

> R.C. 4731.22(B) provides that the board, "pursuant to an adjudicatory hearing under Chapter 119 of the Revised Code and by a vote of not less than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate . . . or reprimand or place on probation the holder of the certificate . . . .
>
> As noted, the General Assembly has granted the board a broad spectrum of sanctions from which to choose. **Naturally, the General Assembly intended that the sanction selected by the board be proportionate to the prohibited act or acts committed by the doctor**. . . . [Emphasis Added]

A disciplinary sanction which is so disproportionate to the conduct of the doctor as to "shock the sense of justice of the community" is unconstitutional. *See, e.g., Solem v. Helm*, 463 U.S. 277, 303 (1983); and *Robinson v. California*, 370 U.S. 660, 667 (1962) (noting that even a "single day in prison may be unconstitutional in some circumstances"). In the case of Dr. Vaughn, the penalty of permanent revocation is clearly **"unduly harsh" and disproportionate to her conduct**:

- A review of the records of 1,000 of Dr. Vaughn's patients by the Board's expert witness found that **Dr. Vaughn did not cause any patient harm**. (R. 89, Board Minutes at 8).

- One of the Board members explicitly recognized **even without mitigating evidence that "revocation is a bit harsh for what has been done in this case."** (R. 89, Board Minutes at 8).

- Another Board member [Dr. Garg] recognized that "**Dr. Vaughn is a knowledgeable and intelligent person who could be of use to the community in providing [medical] services to its citizens.**" (R. 89, Board Minutes at 7).

- Dr. Vaughn has never had a medical malpractice suit filed against her since she graduated from medical school in 1973.

- According to Dr. Master, a physician who is familiar with Dr. Vaughn's medical work during the pendency of her battle with the Board, **Dr. Vaughn "has well-served her patients and the community."**

Dr. Vaughn was punished much more severely for engaging in less egregious behavior than many other doctors brought before the State Medical Board. **She even received a greater punishment than doctors who were convicted of felonies**. See Appendix A.

IV.

The Right Of Allocution, Guaranteed By The Due Process Clause Of The Fourteenth Amendment, Is Applicable To State Licensing Disciplinary Proceedings.

The Board, at page 7 of its brief, argued that the right of allocution "does not apply to state licensure disciplinary proceedings," and that:

> She [Dr. Vaughn] fails to tell the Court . . . why allocution should be recognized as a **procedural due process right** in addition to the established due process standard of "notice and opportunity to be heard."

Again, the Board is incorrect. As noted at page 21 of Dr. Vaughn's petition:

> The petitioner contends that the right of allocution is applicable to state disciplinary proceedings since all such proceedings should reflect "the notion, deeply rooted in the common law, that justice must satisfy the appearance of justice." *In re Grand Jury Proceedings Involving Eve Rosahn*, 671 F.2d 690, 696 (2d Cir. 1982) quoting *Levine v. United States*, 362 U.S. 610, 616 (1960).

The right of allocution serves the purpose of tempering punishment with mercy and ensuring that sentencing reflects individual circumstances. It is just as important in **quasi-criminal** disciplinary proceedings where the livelihood and professional status of a doctor is at issue as in a criminal proceeding where the punishment may be merely a monetary fine.

Allocution, as an aid to a state board or agency in the "sentencing phase," serves a somewhat different, but equally important purpose than the "notice and opportunity to be heard" due process standard:

a. The "notice" standard helps ensure that the respondent in a disciplinary proceeding has an opportunity to respond to the charges and present evidence in the **"guilt"** determination phase of the proceeding.

b. The right of allocution, however, concerns the **"sentencing"** phase of the proceeding and is important to ensure: (1) that justice satisfies the "appearance of justice," *Levine v. United States*, 362 U.S. 610, 616 (1960); (2) that the disciplinary sanction imposed "reflects individualized circumstances," *United States v. Barnes*, 948 F.2d 325, 328 (7th Cir. 1991), and; (3) that the disciplinary sanction is "an appropriate and reasonable penalty under the circumstances" of the case. *Ohio State Bar Association v. Loha, supra.*

The opportunity to exercise the right of allocution is particularly critical in a case such as Dr. Vaughn's, where there has been: (1) a long **seven-year** period between the time of the misconduct in question and the institution of disciplinary proceedings (1986) and the final determination of punishment (August 1993) and (2) a significant change of circumstances during that time period which was relevant to the determination by the Board of a just and reasonable punishment. [During this seven-year period, while practicing medicine pursuant to Court-ordered stay, Dr. Vaughn reformed her practice and "provided excellent medical care to her patients and the community."] *See* paragraphs 12 and 15 of **Appendix A** (Affidavit of Bernard F. Master, D.O., which was submitted herein in support of Petitioner's September 19, 1996 application to this Court [4-208] for a stay order pending certiorari).

The Board argued that the right of allocution does not apply to an administrative disciplinary proceeding because, in its opinion, "the criminal defendant's **liberty interests** prior to sentencing were **much more compelling** than the administrative respondent's **property interests** in his license to practice his profession." [Emphasis Added].

This is not always the case, particularly when the revocation of a professional license can cause loss of social and professional status, financial ruin, and the imposition of an economic "fine" which can be many times greater than fines imposed for violation of criminal laws (i.e., the lifetime loss of earnings which would otherwise accrue from the respondent's medical practice). Moreover, the revocation of a medical license embodies not only a property interest, but a liberty interest as well.

The Board failed to recognize that state disciplinary proceedings involving professionals are **quasi-criminal** proceedings. *In re Ruffalo*, 390 U.S. 544, 551 (1968). Accordingly, the safeguard against inappropriate sentencing afforded by the right of allocution in criminal proceedings is equally applicable to disciplinary proceedings.

Dr. Vaughn is not seeking "**additional** due process" as the Board contends. She is, however, seeking that to which she is **entitled**: a proper sentencing determination **after** the exercise of her constitutional right of allocution.

V.

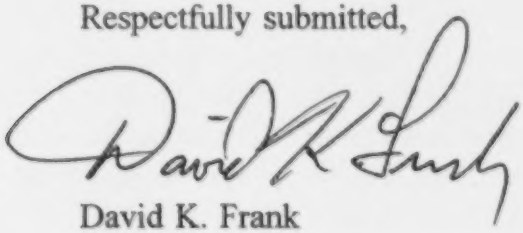
Valid Constitutional Issues Are Presented Under The Facts Of This Case.

The Board's contention that no "valid constitutional issue is presented" in this case is without merit. On the contrary, **two** important constitutional issues involving the Eighth and Fourteenth Amendments are presented which merit review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX A

SUMMARY OF LESS SEVERE PUNISHMENTS IMPOSED BY THE STATE MEDICAL BOARD OF OHIO ON OTHER PHYSICIANS WHO ENGAGED IN MORE EGREGIOUS MISCONDUCT THAN PETITIONER MATTIE L. VAUGHN, M.D.

According to a periodic publication entitled State Medical Board of Ohio Formal Action Mailing List, provided and distributed by the Board, the Board ordered the following punishments in the various medical disciplinary cases noted below:

Physicians Convicted of A Felony

* "**BROWN, CLYDE D.**
(MD #43905) - Cincinnati
Revocation, stayed; indefinite suspension, minimum six months; conditions for reinstatement; probationary terms, conditions and limitations for a period of at least five years. Based on doctor having pleaded guilty in U.S. District Court to four felony counts of Mail Fraud and one felony count of Money Laundering. Order mailed 5/12/95; Order effective 5/12/95." State Medical Board of Ohio Formal Action Mailing List, May, 1995, p. 2

* "**ELLIS, JOHN P.**
(DPM #2463) - Westlake
Revocation, stayed; certificate subject to probationary terms, conditions and limitations for minimum of five years. Based on doctor's convictions in 1989 and 1991 of robbery, and doctor's misrepresentation and publication of a misleading statement by submitting erroneous information on his 9/30/90 renewal application. Order mailed 11/27/92; Order effective 11/27/92." State Medical Board of Ohio Formal Mailing List, Jan./Feb., 1993, p. 3

* **"GRIFFIN, WILLIAM R., JR.**
(MD #25053) - Pickerington
Permanent revocation, stayed; probationary terms, conditions and limitations for a period of four years. Based on doctor having been found guilty of five felony counts of Forgery due to his having written prescriptions on five occasions for Percocet in the name of another individual, when the intended and actual recipient was the doctor's spouse." Order mailed 7/27/95; Order effective 7/27/95." State Medical Board of Ohio Formal Action Mailing List, July, 1995, p. 2

* **"KUNKEL, ALLAN B.**
(MD #35214) - Cleveland
Revocation, stayed; indefinite suspension, minimum one year, such time to be calculated from 7/8/92, when immediate suspension of doctor's license was imposed; conditions for reinstatement; subsequent for minimum of five years. Based of doctor's pleas of guilty to one felony count of drug trafficking and four felony counts of illegal processing of drug documents, stemming from doctor's excessive prescribing of narcotics to his wife, who subsequently underwent treatment for opiate addiction. Order mailed 12/22/92; Order effective 1/22/93, except that suspension is to be calculated from 7/8/92 as specified above." State Medical Board of Ohio Formal Mailing List, November/December, 1992, p. 2

* **"POGORELEC, EMIL E.**
(DO #2101)- Richmond Heights
Suspension for a period of 120 days to be calculated beginning March 8, 1995. Based on his plea of guilty of one felony count of illegal processing of drug documents. Order mailed 7/10/95; Order effective 7/10/95. Suspension effective 3/8/95-7/5/95." State Medical Board of Ohio Formal Action Mailing List, June, 1995, p. 3

* "**SCHUR, EZRIEL Z.C.**
(DPM #2038) - University Heights
Suspension, stayed; probationary terms, conditions and limitations for a period of one year. Based on doctor's pleas of guilty in U.S. District Court to one felony count of Mail Fraud. Order mailed 7/27/95; Order effective 7/27/95." State Medical Board of Ohio Formal Action Mailing List, July, 1995, p. 3

* "**VENIZELOS, PAUL C.** (M.D.) Westlake Revocation, stayed; 60 day suspension; subsequent 5 year probation, conditions to include evaluation for possible impairment and any recommended follow-up treatment. Based on felony conviction (Aggravated Vehicular Homicide)." State Medical Board of Ohio Formal Action Mailing List, June, 1989, p. 3

Physicians Who Engaged In Other Misconduct

* "**SHUMRICK, DONALD ALBERT**
(MD #29011) - Cincinnati
Doctor reprimanded based on his having been found guilty of prescription and dispensing by practitioner, a third degree misdemeanor, due to his having issued a prescription for a Schedule II controlled substance in the name of an individual for whom it was not intended; issuance of controlled substance prescriptions in the name of an individual for whom they were not intended, when the doctor had never met nor examined the individual for whom they were intended. Order mailed 1/18/95; Order effective 1/18/95". State Medical Board of Ohio Formal Action Mailing List, January, 1995, p. 3

* "**LANGLEY, MICHAEL GENE**
(MD #45219) - Walnut Ridge, AR.
Indefinite suspension; conditions for reinstatement;

subsequent probation for a minimum of five (5) years; doctor ineligible to hold D.E.A. registration without prior Board approval. Based on prior action by Arkansas State Medical Board, which was itself based upon a finding that doctor had committed "grossly negligent or ignorant malpractice" by prescribing excessive amounts of controlled substances to various patients and by writing an excessive number of prescriptions for addictive or potentially harmful drugs to those patients. (Journal Entry - no hearing requested) Order mailed 7/16/93; Order effective 7/16/93". State Medical Board of Ohio Formal - Action Mailing List, June, 1993, p. 3

* "**MASSER, ROGER J.**
(DPM #1864) - Columbus
Permanent revocation, stayed; license indefinitely suspended for a minimum of one year, such time to be calculated from 11/11/92, when the immediate suspension of doctor's certificate was imposed; conditions for reinstatement; subsequent probation for minimum of five years; doctor ineligible to hold DEA without prior Board approval. Based on doctor's pleas of guilty to felony drug abuse offenses (Illegal Processing of Drug Documents and Abuse), for which he was found eligible for treatment in lieu of conviction. Order mailed 4/16/93; Order effective 4/16/93." State Medical Board of Ohio Formal Action Mailing List, April/May, 1993, p. 2

* "**KRAUS, NELSON HARWARD**
(MD #36204) Worthington
Revocation, stayed; license indefinitely suspended for minimum of three years; conditions for reinstatement, including SPEX (clinical competency examination) and 300 hours of community service; subsequent probation for at least three years; doctor prohibited from requesting Board's approval to reapply for DEA certificate for at least two years following reinstatement. Based on improper prescribing of controlled substances to two

specified patients. Order mailed 3/16/93; Order effective 3/16/93." State Medical Board of Ohio Formal Action Mailing List, March, 1993, p. 2

* **"MCERLANE, ALBERT DAVID**
(MD #19653) - Cincinnati
Revocation, stayed; license indefinitely suspended; conditions for reinstatement established; subsequent for at least five years. Based on impairment of ability to practice according to acceptable and prevailing standards of care due to habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice. (Journal Entry - no hearing requested) Order mailed 3/12/93; Order effective 3/12/93." State Medical Board of Ohio Formal Action Mailing List, March, 1993, p. 2

* **"GEHRING, RICHARD F.**
(MD #21186) - Sylvania
Indefinite suspension, minimum sixty (60) days. Probation for five years with terms including educational requirements; permanent limitations prohibiting the prescribing of controlled substances appetite suppressants or treating patients for weight control. Based on violation of Board Rules governing controlled substances and state and federal laws governing method of issuing prescriptions. Order mailed 12/17/91; effective 12/17/91." State Medical Board of Ohio Formal Action Mailing List, December 13, 1991, p. 1

* **"SEIPLE, ROBERT STANLEY**
(DO #516) - Columbus
Indefinite suspension, minimum 90 days; conditions for reinstatement; subsequent five year probation; doctor permanently prohibited from treating patients for weight control problems and from prescribing any controlled appetite suppressants. Based on improper prescribing of controlled stimulants and other dangerous drugs to specified patients. Order mailed 5/16/91; suspension

effective 6/16/91." State Medical Board of Ohio Formal Action Mailing List, May 30, 1991, p. 3

* "**MATTONI, JOHN ARTHUR**
(MD #23584) - Toledo
Revocation, stayed, indefinite suspension, minimum one year; conditions for reinstatement; subsequent probation for at least three years. Based on doctor's having engaged in sexual relations with patient without appropriately terminating physician/patient relationship and when doctor knew or should have known that patient suffered from emotional problems; violation of Code of professional Ethics. Order mailed 3/15/91; suspension effective 4/15/91." State Medical Board of Ohio Formal Action Mailing List, March 18, 1991, p. 3

* "**ROY, SUKUMAR**
(MD #31344) - Solon
Three year probation imposed based on doctor's having performed a hysterectomy on a pregnant patient without performing prior diagnostic tests or other appropriate workup. Order mailed 7/13/90; Probation effective 7/13/90." State Medical Board of Ohio Formal Action Mailing List, July 19, 1990, p. 2

* "**MICHAELIS, THOMAS WILLIAM**
(MD #32590) - Cincinnati
Permanent revocation; stayed; indefinite suspension, min. 1 year, such time to be calculated from 7/1/91; conditions for reinstatement; subsequent probation, min. 5 years. Based on convictions for misdemeanors involving moral turpitude (Attempted Gross Sexual Imposition, Voyeurism and Public Indecency)." State Medical Board of Ohio Formal Action Mailing List, April/May, 1992, p. 2

* "**JOHNSON, DON R.**
(MD #18889) - Nelsonville
Revocation, stayed; indefinite suspension minimum three months; reinstatement requirements; subsequent probation for two years with additional limitations. Based on doctor's improper utilization of controlled substances for weight reduction and failure to comply with Medical Board rules concerning utilization of controlled substances for weight reduction. Order mailed 5/5/95; Order effective 6/5/95." State Medical Board of Ohio Formal Action Mailing List, April, 1995, p. 3

* "**JAIN, SHANTI**
(MD #47513) - Garden City, NY
Permanent revocation, stayed;' indefinite suspension, minimum one year; conditions for reinstatement; subsequent probation for at least two years upon commencement of practice in Ohio. Based on doctor's suspension and subsequent exclusion from New York State's Medicaid program; conviction of two counts of Offering a False Instrument for Filing, a second degree misdemeanor, based on the doctor's knowing submission of false invoices to the New York Medicaid program; exclusion from the Medicare program by the U.S. Department of Health and Human Services; prior action by New York Board of Professional Medical Conduct based on doctor's admission of guilt to the charge of professional misconduct; failure to advise Ohio Medical Board on application for license renewal of misdemeanor conviction. Order to be mailed; Order to become effective immediately upon date of mailing." State Medical Board of Ohio Formal Action Mailing List, January, 1995, p. 3.

APPENDIX B

No. 96-340

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

MATTIE L. VAUGHN, M.D.,

Petitioner,

v.

THE STATE MEDICAL BOARD OF OHIO,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Ohio

AFFIDAVIT OF BERNARD F. MASTER, D.O.

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

The affiant, Bernard F. Master, D.O., being first duly cautioned and sworn according to law, does hereby state and depose as follows:

1. I, BERNARD F. MASTER, D.O., am over 18 years of age, am competent to testify to the matters stated herein, and make this affidavit based upon my personal knowledge.

2. I am a physician licensed to practice medicine in Ohio, and have more than 20 years of experience in the practice of medicine.

3. I own and operate a medical clinic, called the Master Medical Center, located at 777 North High Street, Columbus, Ohio, which provides medical services to the Central Ohio area community.

4. Many of the patients of the Center are members of the African American population of Columbus, Ohio's inner-city area, who rely heavily on the Center and its doctors for their medical care.

5. Dr. Mattie L. Vaughn, who is an African American female, who is a highly trained and caring physician who has dedicated her professional life to serving the medical needs of the poor, and particularly those of poor members of the African American Community.

6. She has even served, periodically, as a medical missionary to the poor in the county of Haiti.

7. I have known Doctor Vaughn for more than five (5) years.

8. Between March 1991 and December 1995, Dr. Vaughn was employed at my clinic, the Master Medical Center, located at 777 North High Street, Columbus, Ohio.

9. In December of 1995, I asked her to work in my Cincinnati Medical Center known as Fairmount Family Practice located at 1515 Carll Street, Cincinnati, Ohio.

10. I am personally familiar with the work done by the Petitioner, Dr. Vaughn, and am also familiar with the disciplinary charges brought against her by the State Medical Board of Ohio which resulted in the legal battle between her and the State Medical Board of Ohio.

11. She continued to work for me and provide medical care to her patients during the time that the 1990 and 1993 orders of the State Medical Board of Ohio revoking her license to practice medicine were stayed or suspended by the Common Pleas Court of Franklin County, Ohio, and the Court of Appeals of Ohio.

12. She has not practiced medicine since on or about June 16, 1996 when the Supreme Court of Ohio in Case No. 96-117 denied her motion for a stay of execution and enforcement of that Court's final judgment of April 24, 1996 pending submission and disposition of a petition for certiorari to this Supreme Court of the United States.

13. During the years Dr. Vaughn practiced medicine under the stays issued by the Courts, during the pendency of her appellate battle with the State Medical Board of Ohio, she provided excellent medical care to her patients and the community and has not been the subject of any malpractice claim or suit, or patient complaint.

14. **In my professional opinion, action by this Court staying execution and enforcement of the Court's judgment and the State Medical Board's order to revoke her license will certainly <u>not</u> threaten the health, safety, and welfare of the public.**

15. On the contrary, denying her the right to continue to practice medicine would harm the public, by denying her patients the benefit of her skill and services.

16. She is a dedicated professional who has always been more concerned with helping people than making money --- which, unfortunately, is a rare quality in today's medical field.

17. Since the unfortunate circumstances which led to the commencement of the disciplinary proceedings against her in 1986 by the State Medical Board which are the subject of this case, she has reformed her practice and has well-served not only her patients, but the community and the medical profession.

/s/ Bernard F. Master, D.O.
BERNARD F. MASTER, D.O.

Sworn to and subscribed before me by the said Bernard F. Master, D.O. at Columbus, Ohio, on this 9th day of September, 1996.

/s/ Sandra Lloyd
NOTARY PUBLIC